



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 16150946

Date: AUG. 24, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an information technology (IT) project manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

We rejected the Petitioner's appeal as untimely filed but subsequently reopened the matter, on our motion, due to USCIS expanded flexibilities regarding filing deadlines due to the coronavirus pandemic.¹ On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

¹ *See*, USCIS Extends Flexibility for Responding to Agency Requests, available at: <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-5> (last accessed on August 9, 2021).

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).² *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion³, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

² In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

³ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.⁴

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that his proposed endeavor in the United States is to "continue using my expertise and knowledge as a Project Manager, to work in the fields of security, fire solutions, and Information Technology (IT), among others, in the United States." In addition, the Petitioner stated he seeks to "assist U.S. companies to implement improvement processes, contributing strongly with the increase in their operational efficiencies, and meeting the needs of its customers, thus adding value to these companies, and the U.S. economy."

In his appellate brief, the Petitioner asserts that his endeavor is "to actively leverage his specialized knowledge – in tech-based security and fire solutions – to optimize U.S. business functions in regard to companies and organizations, ranging from any industry, in need of the latest technological advancements, and security trends." He further explains that he "will apply his knowledge, experience, and technical skills to support U.S. institutions in increasing their operational efficiency, and value, through the implementation of evolved IT solutions." The Petitioner provided evidence that he had a respected career as an IT project manager and received recognition from his peers regarding various programs he implemented over the course of his career.

The record includes articles about a shortage of IT professionals in the United States. In addition, the Petitioner provided industry reports and articles indicating public safety services in the United States are actively using predictive policing and surveillance systems that require the development and installation of software and surveillance cameras. The record therefore supports the Director's determination that the Petitioner's proposed work as an IT program manager in the fields of security, fire solutions, and IT has substantial merit.

⁴ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

In determining national importance, the relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

In his appellate brief, the Petitioner points to his background, education, work experience, and specialized training in his field. The Petitioner’s knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890.⁵ The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong. To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work.

At the time of filing, the Petitioner was enrolled in an industrial engineering PhD program at the University of [REDACTED] and also had a tentative job offer to work as a project manager for [REDACTED] at [REDACTED] in the Office of Research and Commercialization.

On appeal, the Petitioner argues his proposed endeavor is of national importance as it is “capable of producing substantially positive economic effects, due to the ripple effects of his professional activities within the business arena.” While we acknowledge the Petitioner’s claims, he has not provided evidence to substantiate them. With respect to the Petitioner’s PhD program, he has not provided documentary evidence that he is conducting research in industrial engineering that would impact the Petitioner’s IT project management field more broadly. Likewise, the Petitioner has not provided documentary evidence of the job duties, projects, or research he would be responsible for completing in his proposed job offer at [REDACTED]. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner’s activities at [REDACTED] do not meet the “national importance” element of the first prong of the *Dhanasar* framework.

On appeal, the Petitioner contends his past work in project management and security, such as installing surveillance cameras and other related IT-securities, “throughout numerous locations across Brazil, such as airports” indicate his proposed endeavor is of national importance. Additionally, the Petitioner pointed to letters of recommendation from his colleagues attesting to his past IT program management work as evidence of his proposed endeavor’s national importance. Additionally, the Petitioner argues the industry reports and articles regarding public safety services in the United States acquiring predictive policing practices are “such as those developed and installed by the Petitioner himself.”

⁵ To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing her expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

However, while the articles indicate that United States public safety services are interested in predictive policing security programs they do not specifically show the government's interest in the Petitioner's proposed endeavor.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. Although he relies on his past work, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not shown eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.